UNIVERSITY OF TORONTO
FACULTY OF LAW

BORA LASKIN LAW LIBRARY
3 1761 06108300 2

# Children and the Law
# Winter 2008
# Volume I

**Prof. Carol Rogerson**
**Faculty of Law, University of Toronto**

Storage

*These materials are based in part on those compiled by L. Ferguson for Children and the Law, University of Alberta, Faculty of Law, Fall 2005.*

*To be considered as published. For the sole educational use of students at the Faculty of Law, University of Toronto*

KE
512
.A7R64
2008
v.1
c.1

BORA LASKIN LAW LIBRARY

FEB - 5 2008

FACULTY OF LAW
UNIVERSITY OF TORONTO

# Children and the Law
# Winter 2008
# Volume I

**Prof. Carol Rogerson**
**Faculty of Law, University of Toronto**

*These materials are based in part on those compiled by L. Ferguson for Children and the Law, University of Alberta, Faculty of Law, Fall 2005.*

*Not to be considered as published. For the sole educational use of students at the Faculty of Law, University of Toronto*

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/childrenlaw01roge_1

# Table of Contents


## WEEK ONE: THEORY AND SOURCES OF CHILDREN'S LAW ..... 4

**1.1 Historical Development and Current Concepts of Childhood** ..... 5
Age of Majority and Accountability Act ..... 5
Sheena Scott, "From Major to Minor: An Historical Overview of Children's Rights and Benefits" ..... 6
David Archard and Colin M. Macleod, "Introduction" in David Archard and Colin M. Macleod, eds., *The Moral and Political Status of Children* ..... 19
M.D.A. Freeman, "Children's Rights: The Evolution of a Concept" ..... 21
David Archard, *Children: Rights and Childhood* ..... 23

**1.2 International Sources of Children's Law** ..... 38
Convention on the Rights of the Child ..... 38
Deidre Fottrell, "One Step Forward or Two Steps Sideways? Assessing the First Decade of the Children's Convention on the Rights of the Child" ..... 53
Jonathan Todres, "Emerging Limitations on the Rights of the Child: The U.N. Convention on the Rights of the Child and its Early Case Law" ..... 60

## WEEK TWO: THEORIES OF CHILDREN'S RIGHTS ..... 74

**2.1 Will Theory, Interest Theory, and "Modified" Will Theory** ..... 75
David Archard, "Children's Rights" ..... 75
John Eekelaar, "The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determinism" ..... 87

**2.2 The Idea of the "Best Interests" of the Child** ..... 94
Loretta M. Kopelman, "The Best-Interests Standard as Threshold, Ideal, and Standard of Reasonableness" ..94
Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General) ..... 104
Sanjeev Anand, "Reasonable Chastisement: A Critique of the Supreme Court's Decision in the 'Spanking' Case" ..... 105

**2.3 Conflicts Between Children, Parents, and the State: Whose Rights? Whose Interests?** ..... 107
Wisconsin v. Yoder ..... 107
B(R) v. Children's Aid Society of Metropolitan Toronto ..... 113

## WEEK THREE: CUSTODY AND ACCESS I- IMPLEMENTING THE BEST INTERESTS TEST ..... 123

**3.1 Introduction and Historical Overview** ..... 124
Jay Folberg, "Custody Overview" ..... 124
Martin Guggenheim, What's Wrong with Children's Rights? ..... 127

**3.2 What the Social Sciences Tell Us About Children and Divorce** ..... 130
Joseph Goldstein, Anna Freud and Albert J. Solnit, *Beyond the Best Interests of the Child* ..... 130
Judith Wallerstein and Joan Kelly, *Surviving the Breakup: How Parents and Kids Cope with Divorce* ..... 133
Judith S. Wallerstein and Tony J. Tanks, "To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce" ..... 136

**3.3 The Current Legal Framework** ..... 139
Divorce Act, sections 2, 16, 17 ..... 139
Children's Law Reform Act, sections 18-33 ..... 141

Vanier Institute of the Family, *Profiling Canada's Families III*.....147

**3.3.1 Sole Custody and Access Determinations: The Best Interests Principle in Practice**.....**149**
Department of Justice, Custody and Access: Public Discussion Paper.....149
Martin Guggenheim, What's Wrong with Children's Rights?.....155
Young v. Young.....160
R. v. R.....180
Van de Perre v. Edwards.....186

**WEEK FOUR: CUSTODY AND ACCESS PART II**.....**196**

**4.1 Alternative Approaches to Custody Determinations**.....**197**

**4.1.1 Joint Custody**.....**197**
Department of Justice, Custody and Access: Public Discussion Paper.....197
A. Leonoff, "Joint Custody and Beyond".....198
Mol v. Mol.....201
Bechler v. Bechler.....207
Ladisa v. Ladisa.....222
Kaplanis v. Kaplanis.....222

**4.1.2 Parenting Responsibilities and Parenting Plans**.....**223**
Department of Justice, Custody and Access: Public Discussion Paper.....223
S.B. Boyd, "W(h)ither Feminism? The Department of Justice Public Discussion Paper on Custody and Access".....223
BILL C-22, An Act to amend the Divorce Act [and other statutes].....226
Kristen Douglas, "Legislative Summary of Bill C-22,".....230
Smith v. Gale.....235

**4.2 Parental Relocation**.....**242**
D. A. Rollie Thompson, "Movin' On: Parental Relocation in Canada".....242
Gordon v. Goertz.....244
Note: Woodhouse v. Woodhouse (1996) 20 R.F.L. (4th) 337 (Ont. C.A.) and Luckhurst v. Luckhurst (1996) 20 R.F.L. (4th) 373 (Ont. C.A.).....258
Ligate v. Richardson.....260
D. A. Rollie Thompson, "Movin' On: Parental Relocation in Canada".....270